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VIA BUNKER CHANNEL

DELIVER OPENING OF BUSINESS

TO: AMBASSADOR BUNKER **IMMEDIATE**
FROM: HENRY A. KISSINGER *[Signature]*
REF: Saigon 0272

ON-FILE NSC RELEASE
INSTRUCTIONS APPLY

1. Thank you for reftel concerning changes in the Agreement.

Following are our comments on the GVN suggestions, keyed to the paragraphs in your message. You should immediately meet with the GVN to give our response. You should make absolutely clear that these additional efforts we will make are as far as we can go. You should remind them that the changes we had already given them were already beyond what we can realistically expect to get and therefore adding still more is apt to overload the circuit further. We obviously will make maximum efforts in Paris but the GVN should be under no illusion that it is possible to obtain the very large number of changes we will now be seeking. With these caveats, you should seek the GVN's final positions on any questions left outstanding in our comments below, while at the same time making clear that there is no give in our positions wherever we say we cannot accept their suggestions. We must have this process wrapped up by opening of business Saturday, November 18 our time.

The framework for your approach remains the President's determination to proceed as outlined in his letter, and his strong view that the changes

DOS Review Completed.

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in the Agreement that we are now discussing are all insignificant in comparison to the importance of unity between our two countries, vigilance with respect to implementation of the agreement, and the need to maintain U.S. public support for our policies.

2. Points of Disagreement.

1) We believe trying for wording more specific than "return them to their homes" is totally unrealistic. We will not be able to get the DRV to admit officially it has forces in the South. Furthermore, the GVN should consider the fact that if there were such an admission and then some NVA forces remained, the legitimacy of their presence is acknowledged. There is nothing in the Agreement now which establishes Hanoi's right to have forces in the South.

2) There is no chance of getting international supervision of military assistance to North Vietnam. We are handling this problem in two ways. First, we have made a unilateral statement, which we will reiterate, [begin text] "In implementing the provisions of Article 7, the United States will take into account the need for replacement produced by the introduction of military equipment into those parts of Indochina not covered by that Article." [end text] Thus Hanoi knows, and the GVN should be reassured, that if military aid to the DRV threatens to upset the balance, we will

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compensate in our own aid to the GVN. In any event, the GVN, particularly after our massive resupply program, is in excellent shape vis-a-vis the DRV, in quality as well as quantity. Secondly, as I informed Thieu, we are working hard with Moscow and Peking on this question and they both know we expect them to limit their shipments under ceasefire conditions.

3) While it will not be possible to change the name of the Council in English, we will, as already promised, change the Vietnamese translation of the phrase "administrative structure." We will also try to further dilute the functions of what is already not a governmental body, as Xuan Thuy himself has pointed out. We will try to delete "maintenance of the ceasefire" and replace "organize" with "have the specific task of organizing" the election. These changes, if we can get them, would underline what is already clear, i. e. that the Council is a facilitative and intermediary body, not a governmental body.

4) As a further concession to the GVN we will try to eliminate the sentence concerning councils at lower levels, but this change is likely to prove unobtainable. In any event, as you pointed out, there is no obligation to set up such councils; the only obligation is to consult about the subject.

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With further reference to Articles 9(f) and (g) you should reassure the GVN that we will stand fast on not accepting the time limits that Lam raised per your paragraph 12) in reftel.

5) We will try to get the word "national" substituted for "general" with regard to elections, but we don't believe this is either attainable or important. We still don't believe that the Vietnamese implies elections for a constituent assembly.

Furthermore, the record is clear on this point and you should point out that Xuan Thuy himself stated in an AEP interview on November 1 that the question concerning the nature of the elections "had not yet been settled. This question will be discussed by the two parties during the period which will follow the ceasefire. The two parties will together discuss the nature of the elections."

6) We cannot change the composition of the ICCS. Our position remains as expressed in the President's letter, and in any event we note that this is a relatively small point for the GVN.

7) You should as diplomatically as possible point out that it is just too late to consider including the GVN in our discussions with Le Duc Tho. However, we reaffirm our intention to consult daily with Ambassador Lam, and you should point out that we are seeking to engage the GVN in four-party and two-party negotiations in Paris concerning the protocols on the ICCS and the military commissions.

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3. Points of Clarification and Modification.

1) We will try to move Chapter I to after Chapter III to reduce its prominence, but doubt we will be successful.

2) As Haig and you have explained, we wish to insert "unconditional" to prevent the ceasefire being linked to other provisions, e. g. political conditions, and thus give a pretext for the war to start again if other aspects of the agreement run into difficulties. We consider this very important for our domestic opinion and would think the GVN would find it advantageous as well. Thus, unless we hear strong views to the contrary, we plan to seek this change.

3) We agree that reference to Article 9(i) is unnecessary and will refer to Article 9(b) only.

4) We thought our change would be helpful but we will defer to the GVN and keep the earlier version of Article 7, paragraph 2.

5) We were planning to substitute the word "equality" if we are successful in dropping the reference to three equal segments. Deletion of the latter will be one of our most difficult tasks, and if we are unsuccessful, we will not seek the addition of "equality." The phrase "representing all political tendencies" corresponds to the approach of the January 25 Joint Plan and indeed we envisage that there would be some neutral elements appointed by both sides, though the three segment^{aspect} would be fuzzed if we are

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successful in getting our language. The GVN, however, should be under no illusion that we are likely to be successful; if we fail, we will press for the sentence "each GVN party will appoint half the membership of the Council" in order to give the GVN sufficient control over the third segment. As for deleting the first "national" in the Council's title, we consider this strictly marginal and do not plan to press for it.

6) The GVN should again be reminded that Article 9(g) says that the task of the Council is "promoting" various functions assigned to the two South Vietnamese parties. To make this even clearer, we will try to have the sentence lead off by saying that "the Council shall have the task of promoting the following:". Also as indicated above, we will try to delete "maintenance of the ceasefire" and give the Council "the specific task of organizing" the election. Thus, /except for the elections, the Council only promotes functions continue to which /remain with the South Vietnamese parties.

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7) Our proposed addition of QUOTE within three months of the signing of this agreement END QUOTE was designed to accommodate the GVN by giving some time frame for the demobilization provision. We believe this is an important and helpful proposal, but if the GVN prefers, we will not seek this addition.

8) We will try for this additional change in Article 10, but it is highly doubtful that we can get it.

9) You should remind the GVN that the North Vietnamese only dropped India on the condition that we would drop Japan. We will of course nominate only Japan and not India, but in view of the record we expect to be faced with the choice of getting both countries or neither country. We still prefer having both countries at the conference, but the GVN comments imply that they prefer having neither. Thus you should get definitive GVN views on this choice.

10) Thieu's letter accepted our proposal QUOTE the Indochinese states END QUOTE. He said that it should be understood to mean the four Indochinese states. The GVN of course is free to interpret it in this way, so their position is protected with our formulation, but the DRV will not accept QUOTE four END QUOTE in the text.

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11) We will try to make Articles 16 and 17 a separate agreement.

12) As indicated above, we will stand fast on keeping time limits out of Articles 9(f) and 9(g).

4. We still await the GVN views on our proposed addition of the following sentence in Article 9(f): QUOTE Until the completion of the political process provided for in Article 9(b), the existing authorities shall continue to exercise ~~their~~ present internal and external functions. END QUOTE. We still think this has the virtue of further underlining the fact that the Council is not governmental. Unless the GVN objects to this suggestion, we plan to go ahead with it.

5. I wish to underline again the necessity of having the GVN's final positions on each of the above questions by opening of business November 18 our time.

6. Warm regards.

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